

Message Text

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TAGS: PFOR, CFED (JUDICIAL ASSISTANCE TREATY), SZ

SUBJECT: US-SWISS TREATY ON MUTUAL ASSISTANCE

REF: STATE 027078

1. DISCUSSION WITH DR. CURT MARKEES FDJP PRODUCED FOLLOWING CLARIFICATION AND COMMENTS RE BASES FOR ARTICLES 25 AND 26.2 OF SWISS IMPLEMENTING LEGISLATION:
ARTICLE 25 - A DEFENDANT IN AN AMERICAN PROCEEDING CAN, RPT CAN, BE INTERROGATED I.E. CAN BE ASKED QUESTIONS TO WHICH HE MAY VOLUNTARILY REPLY. THE KEY WORDS OF THE RESTRICTIVE LANGUAGE OF IMPLEMENTING ARTICLE 25 ARE QUOTE CANNOT GIVE TESTIMONY AS A WITNESS UNQUOTE. LANGUAGE REFLECTS CONCERN WITH FORMAL SWISS DEFINITION OF WITNESS AS SET FORTH IN CHAPTER 10 OF SWISS CODE OF CRIMINAL PROCEDURE RE WITNESSES COMPELLED TO GIVE TESTIMONY, SWEAR TO OR AFFIRM DECLARATION ETC. A DEFENDANT IN THE SWISS FRAME OF REFERENCE MAY VOLUNTARILY ANSWER QUESTIONS BUT CAN NEVER BE CONSIDERED A WITNESS I.E. ONE WHO IS SUBJECT TO OBLIGATIONS AND SANCTIONS OF CHAPTER 10 REFERRED TO ABOVE.

2. ARTICLE 26.2 - ARTICLE 26.2 MAY PRESENT PROBLEMS. MOST SWISS CANTONS HAVE LAWS REQUIRING WITNESSES TO SWEAR TO OR AFFIRM THEIR TESTIMONY (MARKEES STATES THAT AT MOST FOUR OR FIVE CANTONS DO NOT ADDRESS THIS SUBJECT IN THEIR LIMITED OFFICIAL USE

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CANTONAL LEGISLATION). THEREFORE, FOR THE GREAT MAJORITY

OF THE CANTONS, WITNESSES CAN BE COMPELLED TO SWEAR TO OR
AFFIRM THEIR TESTIMONY AND THE SWISS AUTHORITIES CAN IMPOSE
SANCTIONS FOR FAILURE TO COMPLY. IN THOSE FEW CANTONS WHERE
NO LEGISLATION EXISTS, WITNESSES CAN BE COMPELLED
UNDER TERMS OF THE TREATY TO SWEAR OR AFFIRM ON BASIS OF
LAW OF THE REQUESTING STATE BUT SWISS CAN IMPOSE NO
SANCTIONS FOR WITNESSES' REFUSAL TO COMPLY.

3. DR. MARKEES WILL RESEARCH SUBJECT AND INFORM
EMBOFF PRECISELY WHICH CANTONS DO NOT HAVE LAWS CONCERNING
THE SWEARING TO OR AFFIRMATION OF TESTIMONY.
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